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13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 SAN FRANCISCO DIVISION

16 UNITED STATES OF AMERICA,) No. 3:10-mj-70361 (BZ)
17 Plaintiff,) [PROPOSED] ORDER OF DETENTION
18 v.)
19 HUY TRINH,)
20 Defendant.)

21 **I. INTRODUCTION**

22 A detention hearing in the above-captioned case for defendant Huy Trinh was conducted
23 on May 7, 2010. The Court has carefully considered the proffers of the government and the
24 defendant's counsel and the Pretrial Services Report ("PSR"). The Court finds by clear and
25 convincing evidence that the defendant is a danger to the community. The Court also finds that
26 by a preponderance of the evidence that the defendant poses a risk of flight. For the reasons set
27 forth below, the Court concludes that there are no conditions, or combinations of conditions
28 which could be fashioned in order to assure the appearance of the defendant for trial if he is
released. Therefore, for the reasons set forth herein, the Court orders that the defendant be
detained.

1 **II. FACTORS TO CONSIDER UNDER 18 U.S.C. § 3142**

2 **1. Charges and Rebuttable Presumption**

3 On April 29, 2010, the defendant was charged by a criminal Complaint with conspiracy to
4 possess with intent to distribute marijuana in violation of Title 21 U.S.C. § 846. The conspiracy
5 count carries a maximum sentence of life in prison. Therefore, there is a rebuttable presumption
6 that he is both a flight risk and a danger. *See* 18 U.S.C. §3142(e).

7 **2. Danger to the Community**

8 According to the proffers by the Government, on April 29, 2010, agents executed a
9 federal search warrant on the defendant's residence at 1816 Acton St., Berkeley, California.
10 During the search, agents found and seized a .22 caliber semi-automatic Smith and Wesson pistol
11 loaded with eight rounds in the magazine under a dresser in the defendant's bedroom. In a
12 hidden compartment in the same dresser, agents found what appeared to be a silencer. The
13 silencer fit onto the .22 caliber semi-automatic pistol. The pistol had an obliterated serial
14 number.

15 At the time of the search, the defendant was on pretrial release from a November 2009
16 arrest for Driving Under the Influence and Possession of Drugs for Sale in November 2009 in
17 California state court. The defendant is currently awaiting trial on these charges. The Court also
18 finds it significant that the defendant was convicted of Kidnapping With a Firearm in San
19 Francisco Superior Court in the early 1990's and was sentenced to 9 years imprisonment.

20 **3. Risk of Flight**

21 According to the PSR and proffers by the Government, the defendant has significant
22 connections to China. The defendant traveled to China as recently as October 13, 2008. The
23 defendant also has two young twins living in China. It is also important to note that the
24 defendant has used at least four aliases and four separate dates of birth in the past. Despite these
25 significant factors weighing in favor of a finding that the defendant is a risk of flight, he has not
26 presented the Court with any viable sureties willing to sign on bond on his behalf.

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1 **III. LEGAL AUTHORITY TO DETAIN THE DEFENDANT**

2 Under the Bail Reform Act, an authorized judicial officer may order the detention or
 3 release of a defendant pending trial. A rebuttable presumption of both dangerousness and risk of
 4 flight exists when the defendant is charged with a drug felony that carries a maximum term of
 5 imprisonment of ten years or more. 18 U.S.C. §3142 (e). Once the defendant produces some
 6 evidence to rebut the presumption, the presumption has been rebutted. *United States v. Cook*,
 7 880 F. 2d 1158, 1162 (10th Cir. 1989). However, the presumption does not disappear, but rather
 8 remains as a factor for consideration in the Court's determination. *Id.*

9 The judicial officer may detain a defendant if the Government proves by a preponderance
 10 of the evidence that the defendant poses a risk of flight. *United States v. Motamedi*, 767 F. 2d
 11 1403, 1407 (9th Cir. 1985), *United States v. Gebro*, 948 F. 2d 1118, 1121 (9th Cir. 1991). The
 12 preponderance of evidence shows a risk of flight where, among other factors, the weight of the
 13 evidence is enough to alert the defendants to a "reasonable possibility of conviction." *United*
 14 *States v. Townsend*, 897 F. 2d 989, 993-94 (9th Cir. 1990). A defendant's financial condition
 15 and the length of sentence he or she faces are of particular importance in assessing the risk of
 16 flight.

17 The judicial officer may also detain a defendant where the Government shows by clear
 18 and convincing evidence that no release condition will reasonably assure the safety of the
 19 community. Specifically, detention may be ordered where the court finds no condition or
 20 combination of conditions could prevent the defendant's continued or future criminal activity.
 21 *United States v. Salerno*, 481 U.S. 739 (1987).

22 In assessing danger, physical violence is not the only form of danger contemplated by the
 23 statute. Danger to the community can be in the form of continued narcotics activity or even
 24 encompass pecuniary or economic harm. *United States v. Reynolds*, 956 F.2d 192 (9th Cir.
 25 1992). Propensity to commit crime generally may constitute a sufficient risk of danger to come
 26 within the act. See *United States v. Karmann*, 471 F. Supp. 1021, 1022 (C.D. Cal 1979).

27 In short, the Government bears the burden of proving by a preponderance of
 28 the evidence that the defendant poses a flight risk, or by clear and convincing evidence that the

1 defendant poses a danger to the community. *United States v. Gebro*, 948 F. 2d 1118, 1120 (9th
2 Cir. 1991); *United States v. Motamed*, 767 F. 2d 1403, 1405 (9th Cir. 1985).

3 **IV. CONCLUSION**

4 For the reasons detailed above, the Court finds that the defendant has not overcome the
5 rebuttable presumption that he is a danger to the community and a flight risk. *See* 18 U.S.C.
6 §3142(e). Therefore, the Court finds that no conditions or combination of conditions or release it
7 could fashion would assure the defendant's appearance for trial if he was released. Therefore,
8 the Court ORDERS that the defendant be detained.

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10 May 11, 2010
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